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SENATE BILL 128

54TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2020

INTRODUCED BY

Mary Kay Papen

AN ACT

RELATING TO MENTAL HEALTH CARE; ADDING ACTIVITIES TO THE
DEFINITION OF "ASSISTED OUTPATIENT TREATMENT" AND ADDING
DISTRICT ATTORNEYS TO THE PERSONS WHO CAN FILE PETITIONS IN THE
ASSISTED OUTPATIENT TREATMENT ACT; REPEALING A DELAYED REPEAL.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 43-1B-2 NMSA 1978 (being Laws 2016,
Chapter 84, Section 2) is amended to read:

"43-1B-2. DEFINITIONS.--As used in the Assisted
Outpatient Treatment Act:

A. "advance directive for mental health treatment"
means an individual instruction or power of attorney for mental
health treatment made pursuant to the Mental Health Care
Treatment Decisions Act;

B. "agent" means an individual designated in a

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1 power of attorney for health care to make a mental health care
2 decision for the individual granting the power;

3 C. "assertive community treatment" means a team
4 treatment approach designed to provide comprehensive community-
5 based psychiatric treatment, rehabilitation and support to
6 persons with serious and persistent mental disorders;

7 D. "assisted outpatient treatment" means categories
8 of outpatient services ordered by a district court, including
9 case management services, comprehensive community support
10 services, intensive outpatient services, care coordination or
11 assertive community treatment team services, prescribed to
12 treat a patient's mental disorder and to assist a patient in
13 living and functioning in the community or to attempt to
14 prevent a relapse or deterioration that may reasonably be
15 predicted to result in harm to the patient or another or the
16 need for hospitalization. Assisted outpatient treatment may
17 include:

- 18 (1) medication;
- 19 (2) periodic blood tests or urinalysis to
20 determine compliance with prescribed medications;
- 21 (3) individual or group therapy;
- 22 (4) day or partial-day programming activities;
- 23 (5) educational and vocational training or
24 activities;
- 25 (6) alcohol and substance abuse treatment and

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1 counseling;

2 (7) periodic blood tests or urinalysis for the
3 presence of alcohol or illegal drugs for a patient with a
4 history of alcohol or substance abuse;

5 (8) supervision of living arrangements; and

6 (9) any other services prescribed to treat the
7 patient's mental disorder and to assist the patient in living
8 and functioning in the community, or to attempt to prevent a
9 deterioration of the patient's mental or physical condition;

10 E. "covered entity" means a health plan, a health
11 care clearinghouse or a health care provider that transmits any
12 health information in electronic form;

13 F. "guardian" means a judicially appointed guardian
14 having authority to make mental health care decisions for an
15 individual;

16 G. "least restrictive appropriate alternative"
17 means treatment and conditions that:

18 (1) are no more harsh, hazardous or intrusive
19 than necessary to achieve acceptable treatment objectives; and

20 (2) do not restrict physical movement or
21 require residential care, except as reasonably necessary for
22 the administration of treatment or the protection of the
23 patient;

24 H. "likely to result in serious harm to others"
25 means that it is more likely than not that in the near future a

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1 person will inflict serious, unjustified bodily harm on another
2 person or commit a criminal sexual offense, as evidenced by
3 behavior causing, attempting or threatening such harm, which
4 behavior gives rise to a reasonable fear of such harm from the
5 person;

6 I. "likely to result in serious harm to self" means
7 that it is more likely than not that in the near future the
8 person will attempt to commit suicide or will cause serious
9 bodily harm to the person's self by violent or other self-
10 destructive means, including grave passive neglect;

11 J. "mandated service" means a service specified in
12 a court order requiring assisted outpatient treatment;

13 K. "participating municipality or county" means a
14 municipality or county that has entered into a memorandum of
15 understanding with its respective district court with respect
16 to the funding of such district court's administrative
17 expenses, including legal fees, for proceedings pursuant to the
18 Assisted Outpatient Treatment Act;

19 L. "patient" means a person receiving assisted
20 outpatient treatment pursuant to a court order;

21 M. "power of attorney for health care" means the
22 designation of an agent to make health care decisions for the
23 individual granting the power, made while the individual has
24 capacity;

25 N. "provider" means an individual or organization

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1 licensed, certified or otherwise authorized or permitted by law
2 to provide mental or physical health diagnosis or treatment in
3 the ordinary course of business or practice of a profession;

4 O. "qualified professional" means a physician,
5 licensed psychologist, prescribing psychologist, certified
6 nurse practitioner or clinical nurse specialist with a
7 specialty in mental health, or a physician assistant with a
8 specialty in mental health;

9 P. "qualified protective order" means, with respect
10 to protected health information, an order of a district court
11 or stipulation of parties to a proceeding under the Assisted
12 Outpatient Treatment Act;

13 Q. "respondent" means a person who is the subject
14 of a petition or order for assisted outpatient treatment;

15 R. "surrogate decision-maker" means:

16 (1) an agent designated by the respondent;

17 (2) a guardian; or

18 (3) a treatment guardian; and

19 S. "treatment guardian" means a person appointed
20 pursuant to Section 43-1-15 NMSA 1978 to make mental health
21 treatment decisions for a person who has been found by clear
22 and convincing evidence to be incapable of making the person's
23 own mental health treatment decisions."

24 **SECTION 2.** Section 43-1B-4 NMSA 1978 (being Laws 2016,
25 Chapter 84, Section 4) is amended to read:

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1 "43-1B-4. PETITION TO THE COURT.--

2 A. A petition for an order authorizing assisted
3 outpatient treatment may be filed in the district court for the
4 county in which the respondent is present or reasonably
5 believed to be present; provided that such district court is a
6 party to a memorandum of understanding with a participating
7 municipality or county.

8 B. A petition for an order authorizing assisted
9 outpatient treatment may be filed only by the following
10 persons:

11 (1) a person eighteen years of age or older
12 who resides with the respondent;

13 (2) the parent or spouse of the respondent;

14 (3) the sibling or child of the respondent;
15 provided that the sibling or child is eighteen years of age or
16 older;

17 (4) the director of a hospital where the
18 respondent is hospitalized;

19 (5) the director of a public or charitable
20 organization or agency or a home where the respondent resides
21 and that provides mental health services to the respondent;

22 (6) a qualified professional who either
23 supervises the treatment of or treats the respondent for a
24 mental disorder or has supervised or treated the respondent for
25 a mental disorder within the past forty-eight months; [✗]

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1 (7) a surrogate decision-maker; or

2 (8) a district attorney.

3 C. The petition shall be entitled "In the Matter of
4 _____" and shall include:

5 (1) each criterion for assisted outpatient
6 treatment as set forth in Section [~~3 of the Assisted Outpatient~~
7 ~~Treatment Act~~] 43-1B-3 NMSA 1978;

8 (2) facts that support the petitioner's belief
9 that the respondent meets each criterion; provided that the
10 hearing on the petition need not be limited to the stated
11 facts; and

12 (3) whether the respondent is present or is
13 reasonably believed to be present within the county where the
14 petition is filed.

15 D. The petition shall be accompanied by an
16 affidavit of a qualified professional that shall state that:

17 (1) the qualified professional has personally
18 examined the respondent no more than ten days prior to the
19 filing of the petition, that the qualified professional
20 recommends assisted outpatient treatment for the respondent and
21 that the qualified professional is willing and able to testify
22 at the hearing on the petition either in person or by
23 contemporaneous transmission from a different location; or

24 (2) no more than ten days prior to the filing
25 of the petition, the qualified professional or the qualified

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1 professional's designee has unsuccessfully attempted to
2 persuade the respondent to submit to an examination, that the
3 qualified professional has reason to believe that the
4 respondent meets the criteria for assisted outpatient treatment
5 and that the qualified professional is willing and able to
6 examine the respondent and testify at the hearing on the
7 petition either in person or by contemporaneous transmission
8 from a different location."

9 SECTION 3. REPEAL.--Laws 2016, Chapter 84, Section 17 is
10 repealed.